

and more NYNEX central offices to take advantage of the residual TIC exemption.

For example, take a DS3 dedicated transport facility between a NYNEX central office and an IXC point of presence. NYNEX charges approximately \$44,000 per year for such a facility, and we understand that CAP rates are somewhat lower than this.⁴³ Outside of Zone 1 in LATA 132, the per-minute residual TIC will generate up to \$471,000 in revenues on a DS3 facility, assuming 9,000 MOU per trunk with a fully loaded DS3 of 672 trunks. The per-minute residual TIC savings that would result from sending traffic over a CAP facility would be so great that an IXC would have absolutely no financial incentive to stay on NYNEX's Local Transport services even if NYNEX charged nothing for the DS3.⁴⁴ The lower per-minute residual TIC in LATA 132 Zone 1 would not solve the problem. It would generate approximately \$145,000 per year on a DS3 facility, more than three times the cost of the facility itself. An IXC would have to be irrational to use NYNEX's DS3 service regardless of how low NYNEX priced its DS3 service. Substantially the same situation holds true for DS1 transport services, although the dollar values are different.

⁴³ See Affidavit of James Kane.

⁴⁴ The per-minute cost of a NYNEX DS3 facility is approximately 0.06 cents, far lower than the per-minute residual TIC. The per-minute residual TIC savings from using CAP transport easily offset the collocation cross-connection charges, which would be approximately \$2,000 per year for a DS3 facility, assuming DS1 cross-connections from the switch to the collocation node.

For this reason, NYNEX expects the IXC's to shift their traffic to the CAPs as quickly as possible. This will generate substantial losses of both per-minute residual TIC revenues and Local Transport revenues for NYNEX. As noted, a large portion of NYNEX's Switched Access traffic is in central offices where the CAPs have existing or planned collocation facilities, and the Commission's order will encourage the CAPs and the IXC's to collocate in other offices as well. The *Access Charge Reform Order* was adopted in May 1997, which gives the IXC's and the CAPs over 7 months to build additional facilities and to begin rerouting trunks from NYNEX's Local Transport services to the CAPs. Since almost half of LEC residual TIC revenues will be recovered in the NYNEX region, the IXC's will get the most "bang for the buck" by concentrating their efforts there.

The loss of substantial per-minute residual TIC and Local Transport revenues will cause NYNEX irreparable harm. Reductions in revenues of this scale will not be offset by cost savings, since 90 percent of the per-minute residual TIC will be non-service related, and since the diversion of traffic will probably be concentrated on dedicated transport services, which will not save NYNEX any tandem switching costs. Even if the Commission later reversed its rule and allowed NYNEX to recover the per-minute residual TIC revenues retroactively, it could not order the IXC's to return their transport business to

NYNEX once the IXC's have rolled-over their circuits to the CAPs.⁴⁵ NYNEX would have to incur additional financial losses to provide incentives for the IXC's to shift their transport business back. NYNEX's annual revenues from dedicated transport services are approximately \$50 million per year, of which \$18 million is received in offices where multiplexing nodes are active or under order. NYNEX can be expected to lose substantial portions of these revenues in the very near future as a direct result of the Commission's rule. These amounts are not trivial, and they will be lost solely because the Commission has established an uneconomic rate structure that does not give NYNEX a reasonable opportunity to compete.

V. The Grant Of A Stay Will Not Harm Others

A stay, and especially a partial stay, would not harm other parties. The CAPs have competed very successfully with NYNEX in the Local Transport market despite the fact that the current TIC is considerably higher than the per-minute residual TIC. A stay would simply remove an uneconomic incentive for the IXC's to shift their traffic to the CAPs. Thus, there is no reason to assume that application of the per-minute residual TIC to CAP transport will harm competition.⁴⁶ If NYNEX applied the non-service related portion of the per-

⁴⁵ In addition, a retroactive rate increase of this scale would have negative impacts on industry cash flow and earnings reports and would cause undesirable rate churn.

⁴⁶ If the Commission granted a partial stay and allowed NYNEX to apply only the non-service related portion of the per-minute residual TIC to CAP transport,

minute residual TIC to CAP transport, it would not require the CAP customers to bear any of the identifiable transport costs of the LECs.

VI. The Public Interest Will Be Served By A Stay.

A stay would be in the public interest for several reasons. The Commission's rule creates such an uneconomic pricing structure that customers cannot make an accurate choice of the most efficient provider. These distortions in the marketplace will harm competition and create economic waste. If the rule were not stayed, the IXC's and the CAPs could incur the reconfiguration costs of shifting traffic to CAP transport on the basis of an unjustified pricing advantage that is later removed. A stay would avoid the substantial impact on the LECs from the loss of per-minute residual TIC and transport revenues. It would not enrich the LECs -- it would simply allow them to recover the revenues to which they are entitled under the Commission's price cap rules.

the CAPs would still have an advantage over NYNEX, since the IXC's would save up to 0.1 cent per minute on the per-minute residual TIC applied to CAP transport. In the DS3 example described above, the savings would be \$47,100 per year on CAP transport, which is more than NYNEX's price for DS3 service alone. While NYNEX would still be at a pricing disadvantage, a partial stay would be preferable to the current rule, which gives NYNEX no practical ability to compete for Local Transport traffic.

VII. Conclusion

For these reasons, the Commission should grant a stay of its rule prohibiting the LECs from recovering the per-minute residual TIC on traffic that does not utilize LEC Local Transport services. At the very least, the Commission should grant a partial stay that would allow the LECs to apply the non-service related portion of the per-minute residual TIC on CAP transport.

Respectfully submitted,

The NYNEX Telephone Companies

By: 
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Their Attorney

Dated: July 23, 1997

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AFFIDAVIT

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)
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ss:

1. My name is Frank J. Gumper. I am Vice President, Federal Regulatory Planning, for Telesector Resources Group, a subsidiary of the NYNEX Corporation. In this position, I am responsible for formulating the NYNEX position on access charges and other federal regulatory issues before the Federal Communications Commission ("FCC").

2. Using 1996 industry pricing data and the projected effects of the Commission's access charge reform and price cap review orders, NYNEX has estimated the per-minute residual transport interconnection charges ("per-minute residual TICs") and presubscribed interexchange carrier charges ("PICCs") that will become effective on January of 1998, 1999, and 2000. The chart below shows the amount of remaining TIC revenues that will be recovered through the per-minute residual TIC and PICC rates, broken down between the amount that recovers tandem switch service-related costs and the amount that is not service-related;

Estimate of Recovery of Remaining TIC Revenues
(millions)

Per MOU Rates

	January 1998	January 1999	January 2000
<u>LEC Industry</u>			
Service	\$255	\$77	\$0
Non-Service	<u>\$520</u>	<u>\$271</u>	<u>\$0</u>
Total	\$775	\$348	\$0
<u>NYNEX</u>			
Service	\$41	\$21	\$0
Non-Service	<u>\$329</u>	<u>\$236</u>	<u>\$0</u>
Total	\$370	\$257	\$0

PICC Rates

<u>LEC Industry</u>			
Service	\$50	\$55	\$0
Non-Service	<u>\$0</u>	<u>\$1</u>	<u>\$139</u>
Total	\$50	\$56	\$139
<u>NYNEX</u>			
Service	\$0	\$0	\$0
Non-Service	<u>\$0</u>	<u>\$0</u>	<u>\$139</u>
Total	\$0	\$0	\$139

3. These data show that, on January 1, 1998, NYNEX's per-minute residual TIC rate will generate almost half of the per-minute residual TIC revenues for the entire LEC industry. Only about 11 percent of NYNEX's per-minute residual TIC will recover tandem switch service related costs. The rest represents costs that will be shifted to PICCs or be reduced by the application of the X-factor rate reductions in subsequent years. By the year 2000, all of NYNEX's service-related costs will have been shifted from the per-minute

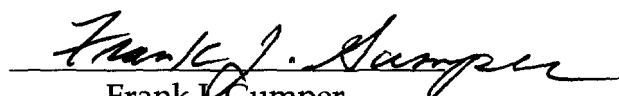
residual TIC to NYNEX's tandem switching rate elements, and \$139 million of remaining non-service related TIC costs will be recovered through the PICCs.

4. The LECs will recover varying amounts of their remaining TIC costs through per-minute residual TIC charges. Some LECs are hardly impacted at all by the Commission's decision to prohibit the LECs from applying the per-minute residual TIC to transport services of competitive access providers ("CAPs"), since they will recover most, if not all, of their remaining TIC costs through PICCs. In addition, they will be able to recover their service-related residual TIC costs through PICCs regardless of whether the LEC or a CAP provides transport services. Other LECs, like NYNEX, will recover the vast majority of their residual TIC revenues from the per-minute residual TIC, which the interexchange carriers can avoid by using CAP transport.


5. Since the rate restructure that NYNEX will implement on January 1, 1998 will be based on 1996 demand, the amounts shown above do not take into account the additional MOU that the interexchange carriers ("IXCs") will route to CAP facilities in 1997 and later in order to avoid the per-minute residual TIC. In addition, it does not take into account the additional expanded interconnection multiplexing nodes that the CAPs will establish in order to take advantage of the per-minute residual TIC exemption in offices where they are not already collocated or have not already ordered collocation facilities. Accordingly, it is extremely unlikely that NYNEX will recover the full amount of

per-minute residual TIC revenues shown above. The reduced revenues in 1998 will, in turn, reduce the revenues that can be shifted to PICC charges in subsequent years. Thus, it is highly unlikely that NYNEX will be able to recover the amount of remaining TIC revenues shown the chart above for the years 1998 to 2000.

6. I attest that the answers and information provided herein are true and correct to the best of my knowledge, information and belief.


Frank J. Gumper

Sworn to and subscribed
before me this ^{22nd} day of
July, 1997 AT ALEXANDRIA, VA


NOTARY PUBLIC
MY COMMISSION EXP 11-30-2001

AFFIDAVIT

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)
)
Suffolk County) ss:

1. My name is James Kane. I am Director -- Access Issues Management for the Telesector Resources Group, a subsidiary of the NYNEX Corporation. In this position, I am responsible for strategic pricing decisions and analysis of major issues for NYNEX's Switched Access Services, including Local Transport services.

2. Under the FCC Part 69 Rules prior to the *Access Charge Reform Order*, the Interconnection Charge ("IC") rate element is applied to all interstate access minutes of use ("MOUs") that are switched at a LEC's end office switch, regardless of which carrier provides the local transport facilities from the end office to the interexchange carrier ("IXC") point of presence ("POP"). The provider of local transport facilities may be the LEC, or it may be a competitive access provider ("CAP"). In either case, the IC rate is billed to the IXC that orders the underlying switched access service from the LEC. Under these conditions, the IXC is likely to select a transport provider (or to provide its own transport facilities) based on a number of business and marketing factors; *e.g.* price, service quality, service features, the provider's business reputation, single vs. multiple suppliers, etc.

3. To the extent that the IC rate applies to MOUs on both LEC and CAP local transport services, it does not affect the pricing portion of the IXC's purchasing decision for local transport. However, the Commission's decision to prohibit the LECs from applying the per-minute residual transport interconnection charge ("per-minute residual TIC") to MOUs transported via CAP services that are interconnected at the LEC's end office starting January 1, 1998 will significantly reduce the "effective price" of the CAP transport as compared to the effective price for LEC transport services. The following chart illustrates this for a customer purchasing DS3 Local Transport services from a LEC end office to an IXC's POP based on the estimated per-minute residual TIC that NYNEX would apply as of January 1, 1998;

Pricing Incentives in the Marketplace

NY LATA 132 - Zone 1

Per-DS3 Costs with NYNEX

Facility	\$ 44,000
TIC/MOU	<u>\$ 145,000*</u>
Total	\$ 189,000

Per-DS3 Costs with CAP

Facility	\$ 40,000**
LEC Conn.	<u>\$ 2,000</u> (1 per DS1)
Total	\$ 42,000

Annual CAP Advantage \$147,000

Other Than NY LATA 132 - Zone 1

Per-DS3 Costs with NYNEX

Facility	\$ 44,000
TIC/MOU	<u>\$ 471,000*</u>
Total	\$ 515,000

Per-DS3 Costs with CAP

Facility	\$ 40,000**
LEC Conn.	<u>\$ 2,000</u> (1 per DS1)
Total	\$ 42,000

Annual CAP Advantage \$473,000

* Assumes 9,000 MOUs per trunk with a fully loaded DS3 of 672 trunks (100% interstate).

** Assumes a 10% discount off NYNEX's rates. In addition, a \$400 NRC applies in Zone 1 offices in New York.

4. As this chart shows, an IXC that purchases CAP transport in a NYNEX Zone 1 LATA 132 office would enjoy an “effective rate reduction” of \$147,000 per year for each DS3 transport service, even though the NYNEX and CAP rates for the DS3 service alone are comparable. The effective rate reduction in other zones, where the per-minute residual TIC rate will be higher, would be \$473,000 per DS3. The savings alone range from 3 to 10 times the price for the underlying facility. (These estimates are based on a fully-utilized facility carrying only interstate traffic. To the extent a facility is not fully loaded, these figures would be reduced, but the difference would still be significant. Where transport facilities are shared use and/or carry both interstate and intrastate switched access services, the revenues associated with those other services would also be at risk).

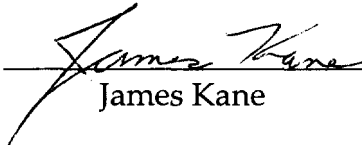
5. These effective price reductions would make NYNEX’s switched transport services appear to be uneconomic to the IXCs, and would likely result in mass migration of services to the “apparently cheaper” CAP facilities, even though the competitor has done nothing to effect such price reductions to the IXC. Thus, it will cause the IXCs to make inefficient purchasing decisions based on incorrect pricing signals. NYNEX estimates that it has over \$18 million per year in interstate direct trunk transport revenues in end offices where CAPs have collocated, or have ordered collocated facilities to be built. This revenue is

unsustainable given the impact of the Commission's per-minute residual TIC rule.

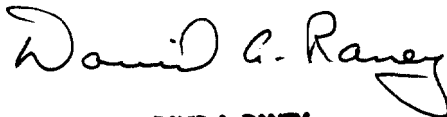
6. NYNEX has two alternatives for responding to this pricing anomaly. First, NYNEX could avoid charging the per-minute residual TIC entirely in collocated offices, which would give it the opportunity to retain Local Transport revenues. This would result in a loss of as much as \$90 million in per-minute residual TIC revenues for end offices where the CAPs have already established or planned collocated transport facilities. Second, NYNEX could continue to charge the per-minute residual TIC, which would cause the IXC's to shift as much of their Local Transport business to the CAPs as possible, causing NYNEX to lose the associated residual TIC revenues. Thus, in either event, it is impossible to recover the residual TIC.

7. The only issue is how quickly the residual TIC revenues would be lost. Recent inquiries from the IXC's indicate that they fully appreciate and anticipate the windfall that they can receive by taking advantage of the exemption from the per-minute residual TIC on CAP transport services. Therefore, it is likely that the IXC's will seek to shift circuits to CAP transport as quickly as possible, starting well in advance of the January 1, 1998 effective date of the Commission's rule. In the past, NYNEX has rolled over as many as three DS3 circuits per week for a single IXC. At that rate, substantial amounts of transport traffic for the facilities-based IXC's could be rolled over to the CAPs in a relatively short time.

8. I attest that the answers and information provided herein are true and correct to the best of my knowledge, information and belief.


James Kane

Sworn to and subscribed
before me this 23 day of
July, 1997



DAVID A. RANEY
Notary Public
My Commission Expires
June 18, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of this pleading were mailed this date, first class postage prepaid, upon the persons listed on the attached service list.



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